

1982 WL 189169 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 17, 1982

*1 Honorable John T. Campbell
Secretary of State
Wade Hampton Office Building
Columbia, South Carolina 29201

Dear Secretary Campbell:

You have informed me that Tega Cay, a residential community in York County, is requesting incorporation. You have further informed me that Tega Cay has a strict security system which controls traffic in and out of the community. From the information you have forwarded to me I have gathered that there is one main street into the community which is guarded by a uniformed security guard. No one other than residents and renters at the marina is allowed in without getting permission from the guard. You have inquired whether Tega Cay could continue to control traffic in this manner if it is granted incorporation privileges.

It is the opinion of this Office that Tega Cay could not continue to control traffic in the manner set out above if it is incorporated. Once incorporated Tega Cay would become a municipality and a municipality must have public streets.

In McQuillan, Municipal Corporations the general law in this area is set out as follows:

11 McQuillan, Municipal Corporations § 30.156

The chief requirement of streets is that they be 'public' and 'for the common use' . . . The primary purpose of streets is use for travel by the public, and this refers not alone to adjacent property owners, nor to the inhabitants of a particular political subdivision, but to the whole people. The right of the public to the use of them is paramount to that of the abutting owner, or to that of any individual or corporation. no matter what may be the use which he or it desires to make of the street. Thus, residents of a particular area in a town or village do not possess and cannot be granted proprietary rights in the streets superior to or exclusive of use by the general public . . . The power of a municipality to regulate streets is not the power to prohibit their use by nonresidents.

10 McQuillan, Municipal Corporations, § 30.03 at 592

An essential characteristic of a street is that it be open to public use for ordinary purpose of travel. It must be a public way; hence, the term 'street' does not include a private road . . . And generally speaking a place from which the public is excluded cannot be a street.

10 McQuillan, Municipal Corporations § 30.39 at 671 provides that '[s]treets primarily are for the use of the people as a whole, and cannot be diverted for merely local, or private use . . .'. See also 10 McQuillan, Municipal Corporations § 30.40 at 685; 7 McQuillan, Municipal Corporations § 24.573 at 594.

Additionally anything in the street or a continuing use of the street ' . . . which renders passage through the street more difficult or which necessarily incommodes or impedes the lawful public use of a street is a public nuisance.' 7 McQuillan, Municipal

Corporations § 24.574 at 596; 10 McQuillan, Municipal Corporations § 30.73 at 765. And '[a] municipality cannot authorize a permanent encroachment . . .', supra. See also 10 McQuillan, Municipal Corporations § 30.98 at 816.

*2 Therefore, it is the opinion of this Office that a security system as described in your letter would constitute a nuisance and violate the requirement that a municipality provide open roads for access by the public.

Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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